

July 21, 2022

Sent via email

Sent additionally via mail to U.S. Ecology addressees

Jeffrey R. Feeler
President and Chief Executive Officer
U.S. Ecology, Inc.
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Suite 1000
Boise, ID 83702
jeffrey.feeler@usecology.com

RE: Potential Violations of Toxics Release Inventory Reporting Requirements for Per- and Polyfluoroalkyl Substances

Dear Mr. Feeler,

The undersigned organizations have identified information through public data from the Environmental Protection Agency (“EPA”) that leads us to believe the following listed facilities under U.S. Ecology’s operation may be in violation of reporting requirements to the Toxics Release Inventory (“TRI”) for certain listed per- and polyfluoroalkyl substances (“PFAS”)¹ for 2020.²

US Ecology Nevada Inc.³
TRI ID: 89003SCLGYHWY95
12 Miles S of Beatty on Hwy 95
Beatty, NV 89003

US Ecology Texas Inc.⁴
TRI ID: 78380TXSCLPETRO
3277 County Rd 69
Robstown, TX 78380

¹ EPA, *Chemicals Added to the Toxics Release Inventory Pursuant to Section 7321 of the National Defense Authorization Act (2022)*, https://www.epa.gov/system/files/documents/2022-03/tri_non-cbi_pfas_list_3_08_2022_final.pdf.

² Names and addresses reflect what is reported through EPA’s TRI Facility Report.

³ TRI Facility Report for U.S. Ecology Nevada, EPA <https://enviro.epa.gov/facts/tri/ef-facilities/#/Facility/89003SCLGYHWY95> (last updated May 24, 2022).

⁴ TRI Facility Report for U.S. Ecology Texas, EPA <https://enviro.epa.gov/facts/tri/ef-facilities/#/Facility/78380TXSCLPETRO> (last updated May 24, 2022).

US Ecology Idaho Inc.⁵
TRI ID: 83624NVRSF1012M
20400 Lemley Rd
Grand View, ID 83624

The undersigned represent members of communities in Texas, Nevada, and broadly across the United States. We are deeply concerned about PFAS contamination in the air we breathe, the water we drink, and the land we live on. We have undertaken multiple initiatives to advocate for our communities and hold industrial polluters accountable.

Under the Emergency Planning and Community Right-to-Know Act (“EPCRA”), facilities are required to report to the TRI if they “manufactured, processed, or otherwise used” a listed toxic chemical above an established threshold in a calendar year and if they fall within the Standard Industrial Classification Codes set forth in EPCRA. 42 U.S.C. § 11023(b)(1)(A). Your facilities are “covered” facilities subject to the TRI’s requirements.

This year, EPA released its National PFAS Datasets as part of its PFAS Strategic Plan, in order to “evaluate . . . [PFAS] reporting, testing, and occurrences in communities.”⁶ The datasets can be viewed at this link: <https://echo.epa.gov/tools/data-downloads/national-pfas-datasets>. EPA’s PFAS Transfers dataset, listed under the subsection titled “Transfers” and provided as an Excel spreadsheet,⁷ derives its data on PFAS-containing hazardous waste from shipment manifests mandated by the Resource Conservation and Recovery Act.

According to this dataset, and as explained in more detail below, in 2020:

- (1) Your Beatty facility received 92,384 pounds of waste containing perfluorooctanesulfonic acid (“PFOS”);
- (2) Your Beatty facility received 11,638,732 pounds of waste containing aqueous film forming foam (“AFFF”), which is known to contain PFOS, perfluorooctanoic acid (“PFOA”), and/or perfluorohexanesulfonic acid (“PFHxS”)
- (3) Your Robstown facility received 243,322 pounds of waste containing PFOS and/or PFOA;
- (4) Your Robstown facility received 56,950 pounds of waste containing AFFF, which is known to contain PFOS, PFOA, and/or PFHxS; and
- (5) Your Grand View facility received 25,231 pounds of waste containing AFFF, which is known to contain PFOS, PFOA, and/or PFHxS.

⁵ TRI Facility Report for U.S. Ecology Idaho, EPA <https://enviro.epa.gov/facts/tri/cf-facilities/#/Facility/83624NVRSF1012M> (last updated May 24, 2022).

⁶ *National PFAS Datasets*, EPA, <https://echo.epa.gov/tools/data-downloads/national-pfas-datasets> (last updated Mar. 22, 2022).

⁷ The downloaded file name is “PFAS_Transfers_E-manifest_01-03-2022.xlsx”.

Beatty, Nevada Facility

(a) PFOS

The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and chemical are attached as **Exhibit A**.⁸ The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the PFOS-containing waste was landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained PFOS. Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 92,384 pounds for PFOS-containing waste.

Based on this manifest data, we believe that this facility may have "otherwise used" a listed PFAS above the 100-pound threshold. As of today, this facility did not submit a report to the TRI for PFOS for reporting year 2020, which it would have been legally obligated to do if it met the threshold.

(b) AFFF

We are concerned that this facility may have "otherwise used" PFAS present in AFFF that this facility received in its waste. The entries in EPA's PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit B**. The manifest entries state under Column A ("DATE_RECEIVED") that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B ("MANAGEMENT_METHOD_DESCRIPTION") that the AFFF-containing waste was either landfilled, which qualifies as "otherwise us[ing]" a TRI-listed chemical, or recovered/reclaimed for reuse, which would require reporting if it were repackaged or disposed of at this facility. The manifest entries state under Column X ("NON_HAZ_WASTE_DESCRIPTION") that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS.⁹ Lastly, the quantities for this facility under Column AC ("QUANTITY_KG"), when converted to pounds, totaled 11,638,732 pounds for AFFF-containing waste.

We request that you provide us with the information detailed below pertaining to the 11.6 million pounds of AFFF-containing waste that your facility received.

- (1) With respect to the volume of AFFF listed under management method "Other Recovery and Reclamation for Reuse", see Exhibit B, what volume of AFFF was repackaged or disposed of at the Beatty facility?

⁸ Attached Exhibits A through E display supporting manifest excerpts. Cells shaded in gray, in addition to their corresponding column and row headers, are duplicated from EPA's PFAS Transfers Excel spreadsheet. Conversions to pounds and total in pounds are our own calculations.

⁹ *Firefighting Foams*, Interstate Tech. Regul. Council, <https://pfas-1.itcreweb.org/3-firefighting-foams/> (last updated Dec. 2021).

- (2) With respect to the volume of AFFF that was landfilled, repackaged, or disposed of at the Beatty facility, we request the calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the landfilling, repackaging, or disposal of that AFFF triggered the 100-pound threshold for reporting. If your facility “otherwise used” this waste above this threshold, you are obligated to report this to the TRI.
- (3) If any of the 11.6 million pounds of AFFF-containing waste was transferred off-site, we request information on where this waste was transferred to and what management method it underwent at the off-site facility.

Robstown, Texas Facility

(a) PFOS/PFOA

The entries in EPA’s PFAS Transfers spreadsheet that support our assertions for this facility and its chemicals are attached as **Exhibit C**. The manifest entries state under Column A (“DATE_RECEIVED”) that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B (“MANAGEMENT_METHOD_DESCRIPTION”) that the PFAS-containing waste was landfilled, which qualifies as “otherwise us[ing]” a TRI-listed chemical. The manifest entries state under Column X (“NON_HAZ_WASTE_DESCRIPTION”) that the waste received by this facility contained PFOS and/or PFOA. Lastly, the quantities for this facility under Column AC (“QUANTITY_KG”), when converted to pounds, totaled 243,322 pounds for PFOS- and/or PFOA-containing waste.

Based on this manifest data, we believe that this facility may have “otherwise used” a listed PFAS above the 100-pound threshold. As of today, this facility did not submit a report to the TRI for PFOS or PFOA for reporting year 2020, which it would have been legally obligated to do if it met the threshold.

(b) AFFF

We are concerned that this facility may have “otherwise used” PFAS present in AFFF that this facility received in its waste. The entries in EPA’s PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit D**. The manifest entries state under Column A (“DATE_RECEIVED”) that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B (“MANAGEMENT_METHOD_DESCRIPTION”) that the AFFF-containing waste was landfilled, which qualifies as “otherwise us[ing]” a TRI-listed chemical. The manifest entries state under Column X (“NON_HAZ_WASTE_DESCRIPTION”) that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS. Lastly, the quantities for this facility under Column AC (“QUANTITY_KG”), when converted to pounds, totaled 56,950 pounds for AFFF-containing waste.¹⁰

¹⁰ A handful of entries indicate that the waste was AFFF foam itself—not rinsate or wastewater.

We request your calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the 56.9 thousand pounds of waste this facility received triggered the 100-pound threshold for reporting. If your facility “otherwise used” this waste above this threshold, you are obligated to report this to the TRI.

Grand View, Idaho Facility

(a) AFFF

We are concerned that this facility may have “otherwise used” PFAS present in AFFF that this facility received in its waste. The entries in EPA’s PFAS Transfers spreadsheet that support our assertions for this facility and its mixtures are attached as **Exhibit E**. The manifest entries state under Column A (“DATE_RECEIVED”) that these transfers were received by this facility in reporting year 2020. The manifest entries state under Column B (“MANAGEMENT_METHOD_DESCRIPTION”) that the PFAS-containing waste was landfilled, which qualifies as “otherwise us[ing]” a TRI-listed chemical. The manifest entries state under Column W (“DOT_PRINTED_INFORMATION”) or Column X (“NON_HAZ_WASTE_DESCRIPTION”) that the waste received by this facility contained AFFF. It is well-known that AFFF contains PFOS, PFOA, and/or PFHxS. Lastly, the quantities for this facility under Column AC (“QUANTITY_KG”), when converted to pounds, totaled 25,231 pounds for AFFF-containing waste.

We request your calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the 25.2 thousand pounds of waste you received triggered the 100-pound threshold for reporting. If your facility “otherwise used” this waste above this threshold, you are obligated to report this to the TRI.

Duty to Report

EPA acknowledges that it and the public cannot determine the “amount or concentration of PFAS being transferred . . . from the manifest information,”¹¹ but the TRI requires covered facilities to rely on reasonable estimates where data are not available,¹² and EPA’s reporting guidance states that a facility can “estimate” releases using “hazardous waste manifests.”¹³ At a minimum, as manifest records reflected your facilities’ receipt of PFAS-containing waste, your facilities had a duty to determine whether or not that waste triggered reporting. If you have a basis for concluding that your facilities did not meet the required reporting threshold, we ask that you share this information with us.

Your company has ten facilities under your operation that handle waste disposal and report to the TRI. Going forward, we strongly urge you to ensure that all ten facilities under your

¹¹ *National PFAS Datasets*, EPA, <https://echo.epa.gov/tools/data-downloads/national-pfas-datasets> (last updated Mar. 22, 2022).

¹² 42 U.S.C. § 11023(g)(2).

¹³ *Question #609, GuideME*, EPA, https://ordspub.epa.gov/ords/guideme_ext/f?p=guideme:qa:::qa:19-609 (last updated Apr. 25, 2022).

operation that “manufactured, processed, or otherwise used” a TRI-listed PFAS are complying with their statutory obligations to: (1) determine whether they trigger a reporting threshold; and (2) submit reports to the TRI, if that threshold was met.

Obtaining accurate quantities of PFAS releases from nearby facilities is imperative to protecting the health of our communities. Not only are PFAS toxic at very low levels of exposure, but they are also extremely difficult to break down in the environment and more likely to accumulate in our bodies. Congress recognized the harms that PFAS pose at low levels by adding 175 in the National Defense Authorization Act for Fiscal Year 2020, and by lowering the default reporting threshold of these chemicals to 100 pounds. By not accurately reporting their releases to the TRI, your facilities are depriving our communities of information that we are not only obligated to have by law, but that we also depend on to safeguard our community members’ health and safety.

Landfilling

All three of your facilities reported that they landfilled large quantities of PFAS. With respect to the volumes of PFAS landfilled, we request information on the steps your facilities are taking to ensure that no PFAS leach into ground water, including whether/how your facilities are lining their landfills.¹⁴ PFAS-contaminated drinking water is a significant source of exposure,¹⁵ and EPA explains how “once in the landfill, chemicals can leach into the ground water by means of precipitation and surface runoff,” which is why liners are necessary to prevent ground water contamination.

Conclusion

We respectfully request that your Beatty facility receiving AFFF for “Other Recovery and Reclamation for Reuse” provide information on whether the AFFF-containing waste was:

- (a) disposed of on-site (which would qualify as “otherwise used”);
- (b) repackaged on-site (which would qualify as “otherwise used”);
- (c) transferred off-site;
- (d) if landfilled on-site, whether your facility took steps to prevent leaching, such as lining the landfills; and
- (e) if transferred off-site, where it was transferred to and what management method it underwent at the off-site facility.

We respectfully request that your Beatty, Robstown, and Grand View facility provide their calculations (e.g., reasonable volume and concentration estimates of PFAS in this waste) in determining whether the waste they received triggered the 100-pound threshold for reporting.

¹⁴ EPA, *Ground Water Contamination* (2015) <https://www.epa.gov/sites/default/files/2015-08/documents/mgwc-gwcl.pdf>.

¹⁵ David Q. Andrews & Olga V. Naidenko, *Population-Wide Exposure to Per- and Polyfluoroalkyl Substances from Drinking Water in the United States*, 7 *Env’t Sci. & Tech. Letters* 931 (2020), <https://doi.org/10.1021/acs.estlett.0c00713>.

If needed to comply with the TRI reporting requirements, your facilities should amend their 2020 TRI reports to accurately reflect the amount of PFAS they released that calendar year. If your facilities determined that they were not required to report for the year 2020, we ask that you provide in a written response:

- (a) the reasonable estimates that support their determination not to report, including reasonable concentration and volume estimates of certain listed PFAS in their waste;
- (b) any applicable statutory exemptions that your facilities may have invoked; and/or
- (c) an explanation that otherwise addresses the information identified in the referenced manifest data.

We ask that you provide a response and, if applicable, amend your 2020 TRI reports by Monday, August 22nd. In the event that you have any questions, please reach out to Eve Gartner at egartner@earthjustice.org and Isabel An at ian@earthjustice.org.

Sincerely,



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